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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,394	12/21/2001	Bruce G. Kania	01-2267	1151

7590 11/30/2004
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PO BOX 51016
Billings, MT 59105

EXAMINER

LEWIS, KIM M

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/027,394

Applicant(s)

KANIA ET AL.

Examiner

Kim M. Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 28-39 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-11 is/are allowed.
- 6) ☒ Claim(s) 12-16, 18-20 and 22-27 is/are rejected.
- 7) ☒ Claim(s) 17 and 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/14/02.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Detailed Action.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of the invention of Group I, claims 1-27 in the reply filed on July 8, 2004 is acknowledged. The traversal is on the ground(s) that the present invention would appear to be part of an overlapping search area. This is not found persuasive because while the invention of claims 1-27 is directed to a treatment device and classified in class 602, subclass 41, the invention of claims 28-39 is directed to a device for treating dental and periodontal conditions, which is classified in class 433, subclass 136. The distinctive feature in claims 28-38, which is not included in claims 1-27, is a dental appliance. The additional searching required to examine the dental appliance places a serious burden on the examiner.

The requirement is still deemed proper and is therefore made FINAL.

Information Disclosure Statement

2. The information disclosure statement filed 2/14/02 has been received and made of record in the application file wrapper. Note the acknowledged form PTO-1449 enclosed herewith.

Claim Objections

3. Claim 17 is objected to because of the following informalities: The claim incorporates an additional dependent claim therein. The examiner has assumed that

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this is a typo and that the additional dependent claim language which recites "[t]he device as recited in claim 9, wherein said first layer further comprises a gel composition including a block copolymer and mineral oil". The applicant is advised to rewrite this claim as a separate claim. The applicant should also note that the examiner will examine claim 17 as if the above-recited language is not present in the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 12-16, 18-20 and 22-27 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,087,549 ("Flick").

As regards claims 12, 13, 15, 16, 18-20 and 23-27, Flick discloses a treatment device in the form of a flexible (thereby being shapeable and conformable) multilayer laminate wound dressing (Abstract and col. 6, lines 1-3), comprising an antimicrobial sheet material (30) containing a silver containing nylon fabric (bactericidal silver metal)(col. 8, lines 47-56); and an appliance (e.g., a feeding tube) for retaining said antimicrobial sheet material in a selected position engaging a treatment site so that (Fig.

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5 and col. 8, lines 26-28), when said antimicrobial sheet material is in said selected position, said antimicrobial sheet material releases metal ions to said treatment site when wetted (col. 5, lines 63-67 and col. 9, lines 18-30).

The applicant should note the disclosure of the semi-permeable, polymeric materials for layer (40), which can be placed in between the metalized layers at col. 7, lines 54-66, and which constitutes a third layer (Fig. 2).

As to claims 14 and 22, Flick discloses crystalline silver at col. 9, lines 19-31.

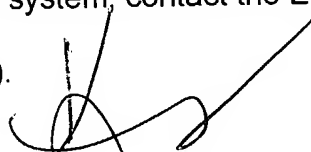
Allowable Subject Matter

6. Claims 1-11 are allowed.
7. Claims 17 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-4796. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett, can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kim M. Lewis
Primary Examiner
Art Unit 3743

kml
November 28, 2004